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Attorneys for 15005 NW Cornell LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

15005 NW Cornell LLC,
Vahan M. Dinihanian, Jr.,

Debtors.

Bankruptcy Case Nos.:

19-31883-dwh11 (Lead Case)
19-31886-dwh11

Jointly Administered Under
Case No. 19-31883-dwh11

**FIRST AMENDED NOTICE OF
SETTLEMENT AND COMPROMISE
AND MOTION TO APPROVE
SETTLEMENT**

AMENDED NOTICE OF SETTLEMENT AND COMPROMISE

NOTICE IS GIVEN that Vahan M. Dinihanian Jr. ("*Dinihanian*") and 15005 NW Cornell, LLC ("*15005 LLC*") (collectively, "*Debtors*") request the Court's approval of a settlement in connection with the Notice of Motion for Relief from Automatic Stay in a Chapter 11/12 Case and

Notice of Hearing Thereon [Doc. 489] (the “**MFR**”) filed by the Tasha Teherani-Ami (“**Creditor**”). The Settlement Agreement negotiated and executed by the Debtors is attached hereto as **Exhibit 1** (the “**Settlement Agreement**”). This Notice is provided pursuant to Fed R. Bankr. P. 2002(a)(3).

YOUR ARE NOTIFIED that unless you file an objection to the proposed action no later than **5:00 p.m. on January 23, 2022**, setting forth the specific grounds for the objection and your relation to the case, with the Clerk of Court at 1001 SW 5th Ave. #700, Portland OR 97204 and serve it on Debtors’ counsel, Nicholas J. Henderson, Motschenbacher & Blattner LLP, 117 SW Taylor Street, Suite 300, Portland, OR 97204, the undersigned will proceed to take the proposed action, or apply for an order if required, without further notice or a hearing.

MOTION TO APPROVE SETTLEMENT

The Debtors, pursuant to FRBP 9019(a) move the Court for entry of an order approving the Settlement Agreement on the MFR, and, in support, the Debtors represent and state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

2. The basis for the relief requested in this Motion include Section 105 of the Bankruptcy Code and FRBP 2002 and 9019.

BACKGROUND AND SUMMARY OF THE AGREEMENT

3. On August 22, 2012, Creditor filed a petition for dissolution of her marriage to Dinihanian in the Multnomah County Circuit Court, Case No. 1208-68730 (the “**Divorce Proceeding**”).

4. A General Judgment of Dissolution of Marriage (the “***Divorce Judgment***”) was entered in the Multnomah County Circuit Court on March 22, 2016. The Divorce contained a \$2.25 million equalizing award in favor of Creditor and against Dinihanian.

5. Dinihanian’s obligations under the Divorce Judgment were secured by the following two deeds of trust:

- a. A Trust Deed, Security Agreement, Assignment of Leases and Rents, and Fixture Filing, executed by 15005 LLC as grantor, dated February 1, 2016, recorded February 8, 2016, as Recording No. 2016-008669, in the records of Washington County, Oregon (the “***Cornell Trust Deed***”), encumbering real property commonly known as 15005 NW Cornell Road, Beaverton, OR 97006 and legally described therein (the “***Cornell Property***”); and
- b. A Residential Trust Deed executed by Dinihanian as grantor, dated February 1, 2016, recorded February 8, 2016, as Recording No. 2016-014522, in the records of Multnomah County, Oregon (the “***Skyline Trust Deed***”), encumbering certain real property commonly known as 237 NW Skyline Blvd., Portland, OR 97210 and legally described therein (the “***Skyline Property***”).

6. When the Divorce Judgment was not paid, Creditor commenced a non-judicial foreclosure of the Skyline Property and a non-judicial foreclosure of the Cornell Property. The foreclosure sales were scheduled for June 20, 2019.

7. On May 21, 2019, Debtors each filed voluntary petitions under Chapter 11 of Title 11 of the United States Code. On June 13, 2019, the Court entered an order directing that the Debtors’ cases be jointly administered. *See* ECF No 26.

8. On May 19, 2021, the Court entered a Stipulated Order Regarding Creditor Tasha Teherani-Ami’s Motion for Relief from Stay Re: Cornell Property. *See* ECF No. 397. That order provided that the automatic stay would terminate with respect to the Cornell Property on September 30, 2021.

9. On October 26, 2021, Creditor sent notice of a foreclosure sale for the Cornell Property, scheduled for January 25, 2022.

10. On November 18, 2021, Creditor filed the MFR, requesting relief from the stay to foreclose against the Skyline Property.

11. The Debtors and Creditor have reached an agreement to resolve the MFR, to enable Dinihanian to evaluate whether he can propose a new Chapter 11 Plan after the scheduled foreclosure of the Cornell Property. The parties agreement was reduced to writing, and fully executed as of January 7, 2022.

12. The terms of the Settlement Agreement are set forth on the attached **Exhibit 1** and the material provisions are as follows:

- a. Debtors shall not appeal judgments entered in Adversary Proceedings 20-03077 and 20-03079;
- b. Debtors shall not contest the scheduled foreclosure sale of the Cornell Property on January 25, 2022; and
- c. Creditor shall withdraw the MFR, and shall not renew it for 90 days following the foreclosure sale of the Cornell Property.

ARGUMENT

13. A bankruptcy court should approve a proposed settlement if the court finds the settlement “fair and equitable” based on an “educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” *TMT Trailer Ferry*, 390 U.S. at 424. See also *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986) (a compromise should be approved when it is “fair and equitable”).

14. It is sufficient that the Court find that the settlement was negotiated in good faith and is reasonable, fair, and equitable. See *A & C Props.*, 784 F.2d at 1381. Accordingly, a settlement need only “be in the best interests of the estate and ‘reasonable, given the particular circumstances of the

case.”” *Goodwin v. Mickey Thompson Entm’t Grp., Inc. (In re Mickey Thompson Entm’t Grp., Inc.)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003) (internal citations omitted).

15. To determine whether a compromise is fair and equitable, the Ninth Circuit has held that a bankruptcy court should consider:

- a. [t]he probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

A & C Props., 784 F.2d at 1381 (quoting *Lambert v. Flight Transp. Corp. (In re Flight Transp. Corp. Sec. Litig.)*, 730 F.2d 1128, 1135 (8th Cir. 1984)).

16. The Settlement Agreement resolves the MFR and potential appeals in the adversary proceedings. Any potential appeal of the adversary proceeding judgment(s) would involve a massive record, as the proceedings in the bankruptcy case and the adversary proceedings spanned numerous hearings, and involved large exhibits. Litigating both the MFR and appeals to conclusion would necessarily result in significant administrative expense to both Debtors without either side having a clear probability of success.

17. Second, the Settlement Agreement provides a benefit to both Debtors’ estates. Creditor’s claim against 15005 LLC will presumably be fully paid at the foreclosure sale on January 25, 2022, and may result in surplus proceeds being returned to 15005 LLC’s bankruptcy estate. Dinihanian will be able to then propose a more modest plan to resolve any remaining debts that he has after Creditor’s claim is paid. In the event any deficiency balance remains after the scheduled sale, Dinihanian will have time to propose a plan to resolve the deficiency.

18. Finally, the Settlement Agreement is the product of consent from both Debtors and Creditor. The agreement of each allows for a speedy and less expensive resolution of the dispute concerning the MFR and the potential appeals.

19. As a result, the Settlement Agreement satisfies the *A & C Properties* factors and should be approved.

WHEREFORE, the Debtors respectfully requested that the Court enter an order, in the form attached hereto as **Exhibit 2**, approving the Settlement Agreement.

DATED this 12th day of January, 2022

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson

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Attorneys for Plaintiff 15005 NW Cornell
LLC

EXHIBIT 1
SETTLEMENT AGREEMENT

EXHIBIT 2
PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

<p>In re:</p> <p>15005 NW Cornell LLC, Vahan M. Dinihanian, Jr.,</p> <p style="text-align:right">Debtors.</p>		<p>Bankruptcy Case Nos.:</p> <p>19-31883-dwh11 (Lead Case) 19-31886-dwh11</p> <p>Jointly Administered Under Case No. 19-31883-dwh11</p> <p>ORDER RE: DEBTOR'S FIRST AMENDED MOTION TO APPROVE COMPROMISE</p>
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Based on Debtors' First Amended Notice of Settlement and Compromise and Motion to Approve Settlement (Dkt. No. ____) (the "***Motion***"), and the Court being otherwise fully advised, it is ORDERED that the Motion is granted and the Settlement Agreement attached hereto as **Exhibit 1** is approved.

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Order Presented by:

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson
Nicholas J. Henderson, OSB No. 074027
Telephone: 503-417-0508
E-mail: nhenderson@portlaw.com
Attorneys for Debtor Vahan M. Dinihanian, Jr.

PARTIES TO SERVE:

CM/ECF: All participants.
First-Class Mail: None.

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing FIRST AMENDED NOTICE OF SETTLEMENT AND COMPROMISE AND MOTION TO APPROVE SETTLEMENT was provided to the following parties through the Court's Case Management/Electronic Case File system:

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I further certify that on the date set forth below, a true and correct copy of the above-described document was sent via first class mail, postage prepaid, to the parties listed on the attached mailing matrix.

DATED: January 12, 2022.

MOTSCHENBACHER & BLATTNER, LLP

/s/Nicholas J. Henderson
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Vahan M. Dinihanian, Jr.

Label Matrix for local noticing
0979-3
Case 19-31883-dwh11
District of Oregon
Portland
Wed Jan 12 11:05:44 PST 2022

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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(u)Bateman Seidel

(u)Christiana LLC

(u)Columbia State Bank

(u)Cornell Rd LLC

(u)Delap LLP

(u)Lillian Logan

(u)Tasha Teherani-Ami

(u)Tasha Teherani-Ami, in her capacity as th

End of Label Matrix
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Bypassed recipients 9
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